

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 817 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

LACHHWANI & CO.

Versus

JAI CHEM INDUSTRIES

Appearance:

MR KV SHELAT for Petitioners
MR MIHIR H JOSHI for Respondent No. 1
DELETED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/01/2000

ORAL JUDGEMENT

1. This revision application is directed against the order dated 29th April, 1999 of City Civil Court, Ahmedabad. This order reads as under:

The defendant has failed to deposit sum of Rs.

18 lacs within stipulated time as per order of the court. Therefore, suit is decreed as per Rule 147 C.C. Court Rules read with Order 37 Sub-rule 2 of C.P.C.. Suit is decreed for sum of Rs. 22,27,300/- with interest at the rate of 15% per annum from 31/1/94 till the date of payment with proportionate costs.

2. In the revision application, prayer has been made:

- (A) Hon'ble Court be pleased to quash and set aside the order passed by the learned City Civil Court in Summary Suit No. 5141 of 1997 on 29th of April, 1999 whereby the learned Judge passed decree under Rule 147 of City Civil Court rules and rejected the reasonable time to engage another lawyer and that too without deciding the application for extension of time as directed by the Hon'ble High Court.
- (B) Be further pleased to direct the learned Judge to hear and consider the application for extension of time as directed by the Hon'ble High Court in Misc. Civil Application No. 638 of 1999.
- (C) Pending hearing and final disposal of the present Civil revision application the execution, operation and implementation of the order dated 29th April, 1999 in Summary Suit No. 5141 of 1997 be stayed.
- (D) Any other and further reliefs as the Hon'ble court deem fit may please be granted.

3. Shri Mihir Joshi raised a preliminary objection that this revision application is not maintainable as under the impugned order the summary suit filed by the respondent has been decreed by the court below. This order is appealable and where appeal lies, the revision application is not maintainable.

4. Shri Shelat, learned counsel for the petitioners submitted that this revision application is maintainable as decree has not been passed. He made reference to definition of 'decree' as given under section 2 of C.P.C.. Making reference to section 96 of the C.P.C., Shri Shelat submits that an appeal lies against the decree and impugned order is not a decree. The defendants - petitioners have no right to file the appeal and only remedy available to them is to file revision application. Referring to provision of section 99 of C.P.C., Shri Shelat contends that where the learned trial

court has committed irregularity etc. the same are not subject to correction by the appellate court. In this case, learned trial court has committed serious irregularity in not passing the order on application filed by the petitioners for extension of time to deposit the amount subject to deposit of which leave to defend the suit has been granted to the defendants petitioners. Lastly, he submits that in case this court is not giving relief to the petitioners in this civil revision application, the petitioners may be permitted to withdraw this revision application to file an application under Order 37 Rule 4, C.P.C..

5. I do not find any merits in any of the contentions raised by the learned counsel for the petitioners. The order impugned in this revision application is very clear and thereunder the suit has been decreed. It is true that formal decree has not been drawn but that is only a ministerial act. In case the contention of the learned counsel for the petitioners is accepted then in all the cases where the final judgments have been given and normally time is taken by the courts to draw decree though judgment is appealable, after drawing of the decree, parties may file the revision application. That will create a chaos and it will hurt provisions of appeal as well as make nugatory to section 96 of C.P.C.. If we go by the order of the trial court as well as the prayer made by the petitioners in the revision application it is very very clear, specific and explicit that the defendants - petitioners had also taken it to be a decree i.e. final decision of the suit. The petitioners should have waited for drawing of the decree by the trial court. Merely because decree is not drawn, this revision application cannot be entertained on this technical plea. It is clearly an abuse of the process of the court, which is sought to be abused by the defendant petitioners. Section 99 of the C.P.C. is wholly misplaced and misreferred by the counsel for the defendants - petitioners. It is of little help to the defendants - petitioners in this case. Section 115, carves out exception that High Court can not call for the record of any case which is decided by any court subordinate to it and in which appeal lies. Here against the order impugned in this revision application, appeal lies under section 96 of the C.P.C. and that was the only remedy available to the defendants - petitioners. This revision application is not maintainable and the preliminary objection raised regarding maintainability of the revision application is full of merits and it deserves to be accepted.

6. Accordingly, this revision application fails and the same is dismissed as not maintainable. Rule discharged. Interim relief, if any, granted by this court stands vacated.

7. As this revision application has been dismissed only on the ground of maintainability, the dismissal of the same will not come in the way of the petitioners to raise whatever legal remedy available to them against the impugned order. Prayer made for withdrawal of this revision application in view of what is stated earlier is hardly of any substance and consequence. The petitioners are directed to pay Rs.2000/= as costs of this revision application to the plaintiff- respondent.

zgs/-